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cc: Leslie

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**SECRETARY, BOARD OF
OIL, GAS & MINING**

BEFORE THE BOARD OF OIL, GAS, AND MINING DEPARTMENT OF NATURAL RESOURCES IN AND FOR THE STATE OF UTAH	
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IN THE MATTER OF THE PETITION BY THE DIVISION OF OIL, GAS AND MINING FOR AN ORDER AGAINST BLACK SANDS HOLDING COMPANY, NEVTAH CAPITAL MANAGEMENT INC., AND MR. EDWARD PUCCIARELLI :	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
(1) CONFIRMING THE WITHDRAWAL OF THE NOTICES OF INTENTION TO COMMENCE SMALL MINING OPERATIONS S/047/0081, S/047/0082, S/047/0083, S/047/0084, S/047/0085, and S/047/0086;	DOCKET NO.: 2012-031 CAUSE NO.: S/047/0081 – S/047/0086
(2) TO FORFEIT THE SURETY AND CASH BONDS, TO DIRECT THE DIVISION TO COMPLETE RECLAMATION;	
(3) TO INITIATE A CIVIL SUIT AGAINST BLACK SANDS HOLDING COMPANY TO RECOVER COSTS OF RECLAMATION; AND	
(4) TO TAKE ALL OTHER ACTIONS NECESSARY TO RECLAIM THE LANDS LEASED BY BLACK SANDS IN HOLDING COMPANY IN UINTAH COUNTY, UTAH.	

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This Cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, September 26, 2012 at approximately 1:30 p.m., in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City, Utah. The following Board members were present and participated at the hearing: Chairman James T. Jensen, Vice-Chairman Ruland J. Gill, Jr., Jean Semborski, Jake Y. Harouny, Kelly L. Payne, Chris D. Hansen and Carl F. Kendel. The Board was represented by Michael S. Johnson, Esq., Assistant Attorney General.

Testifying on behalf of Petitioner Utah Division of Oil, Gas and Mining (the "Division") were Paul Baker – Mineral Program Supervisor and William Stokes – Minerals Resource Specialist for the School Trust Lands Administration ("SITLA"). Cameron Johnson, Esq., appeared as the attorney for the Division. Mr. Baker's testimony explained what actions the Division had taken before filing the Notice of Agency Action seeking the withdrawal of Black Sands Holding Co.'s ("Black Sands") NOIs and what outstanding reclamation work remained at the site. Mr. Stokes explained SITLA's prior involvement with Black Sands as the lessor of the six sites, that the Black Sands leases were expired, and that SITLA wished to see the lands reclaimed.

Black Sands and Mr. Edward Pucciarelli did not respond to the NOAA and were not represented at the hearing by counsel. Nevtah Capital Management, Inc. was represented by Steven R. Skirvin, Esq.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised, and for good cause, hereby makes the following findings of fact, conclusions of law and order in this Cause.

FINDINGS OF FACT

1. The six Black Sands NOI's addressed in the Division's NOAA cover lands leased separately from SITLA and described as follows:
 - a. S/047/0081 ("Site 1") located in SW1/4 of SW1/4 of S14, T4S, R20E and NW1/4 of NW1/4 of S23, T4S, R20E in Uintah County, Utah.
 - b. S/047/0082 ("Site 2") located in SW1/4 of SE1/4 of S4, T5S, R21E in Uintah County, Utah.
 - c. S/047/0083 ("Site 3") located in NE1/4 of SE1/4 of S32, T5S, R22E in Uintah County, Utah.
 - d. S/047/0084 ("Site 4") located in SW1/4 of NW1/4 of S6, T6S, R22E in Uintah County, Utah.
 - e. S/047/0085 ("Site 5") located in W1/2 of E1/2, S36, T4S, R20E in Uintah County, Utah.
 - f. S/047/0086 ("Site 6") located in S1, T5S, R20E; S2, T5S, R20E; and S12, T5S, R20E in Uintah County, Utah.
2. The Utah Division of Oil, Gas and Mining approved the six separate Notices of Intention to Commence Mining Operations ("NOI") submitted and executed by Frank Ginton, President for Black Sands on the following dates:
 - a. On May 25, 2006 Site 1's NOI was approved.
 - b. On April 3, 2006 Site 2's NOI was approved.
 - c. On April 11, 2006 Site 3's NOI was approved.
 - d. On April 18, 2006 Site 4's NOI was approved.
 - e. On May 31, 2006 Site 5's NOI was approved.

f. On May 12, 2006 Site 6's NOI was approved.

3. The Division and Black Sands finalized reclamation contracts, which were signed and submitted by Frank Ginton of Black Sands, for the each of the six sites on the following dates:

a. On May 9, 2006 Site 1's reclamation contract was signed by Division Director John Baza.

b. On May 26, 2006 Site 2's reclamation contract was signed by Division Director John Baza.

c. On May 11, 2006 Site 3's reclamation contract was signed by Division Director John Baza.

d. On May 18, 2006 Site 4's reclamation contract was signed by Division Director John Baza.

e. On May 26, 2006 Site 5's reclamation contract was signed by Division Director John Baza.

f. On May 26, 2006 Site 6's reclamation contract was signed by Division Director John Baza.

4. Each of the NOIs required Black Sands to submit as surety either cash or a surety bond for the amount of \$18,600. Cash bonds were given for each site and deposited in the state's account with Zions Bank, account # 8911939. The total amount of surety money held by the Division is \$111,600.

5. On July 10, 2007 Nevtah Capital Management's corporate status expired in Utah and has not been renewed since. The NOI listed Nevtah as the owner of the minerals leased by Black Sands. No other relationship between Black Sands and Nevtah

is known.

6. On November 1, 2007 the Division sent a letter to Black Sands informing the company about the need to amend its NOI to reflect changes in access to each site. Black Sands lost its original rights of entry when its leases with SITLA were discontinued. The letter also asked Black Sands to remove containers from Site 5 by November 23, 2007.

7. In June, 2008 Black Sands submitted applications for the release of responsibility and the bonding of each site to the Division. Individual letters were received for Sites, 1-5 on June 6, 2008 and Site 6 on June 3, 2008.

8. In September 9, 2008 the Division rejected Black Sands' applications for Sites 1, 2, 3, and 5 due to insufficient reclamation work, funds, and outstanding permit fees.

9. The release application for Site 4 and 6 were denied for the same reasons on September 22, 2008.

10. On May 6, 2009 Black Sands corporate status expired in Utah and it has not been renewed since then. On October 20, 2009 the Division received a notice identifying the future contact for Black Sands as Edward Pucciarelli of Aurora, CO. Subsequent correspondence between the Division and Black Sands has been with Mr. Pucciarelli. The Division included Mr. Pucciarelli as a named Respondent in its NOAA.

11. On the May 6, 2009 Black Sands delivered a check for \$900 to the Division as payment for the past due permit fees.

12. On June 23, 2009 the Division informed Black Sands that its surety for each site was being escalated from \$18,600 to \$25,200. The Division asked Black Sands

to post the additional monies by August 25, 2009.

13. On October 28, 2009 the Division withdrew Black Sands' six NOIs based on the company's continued failure to pay the permit fees and escalate the surety bonds for each site. The Division further informed Black Sands that reclamation needed to be completed by November 30, 2009.

14. On November 24, 2009 the check for \$900 bounced.

15. On June 22, 2010 the Division sent Black Sands and Mr. Pucciarelli a letter informing the company of overdue permit fees, which was the last formal communication to Black Sands made by the Division.

16. On August 10, 2012 the Division filed a NOAA seeking the formal withdrawal of Black Sands' six NOIs and the forfeiture of all six reclamation bonds.

17. No response was filed by any of the named parties.

18. At the September 26, 2016 hearing the Board dismissed Nevtah as a party to this matter after determining that Nevtah was not an operator for any of the sites. The Board also dismissed Edward Pucciarelli.

19. The Board also terminated the rights and interests of Black Sands Holding Company.

CONCLUSIONS OF LAW

1. Under Utah Code Ann. § 40-8-13, an operator is required to have a NOI before it can begin any mining operations at a site.

2. An operator's NOI may be withdrawn if the operator "substantially fails to perform reclamation" or "fails to provide and maintain surety as required" in accordance with Utah Code Ann. § 40-8-16(2)(a) and(b).

3. An operator is required to reclaim mine site in accordance with the Divisions' requirements and the requirements of Utah Admin. Code R647-4-111.
4. If an operator fails to conduct reclamation, the Board may, after notice and hearing, order that the "the costs and expenses of reclamation, together with costs of recollection including attorney's fees be recovered in a civil action brought by the attorney general against the operator in any appropriate court" under Utah Admin. Rule R647-3-112(2).
5. Under Utah Code Ann. § 40-8-9.1(3)(a) "a civil penalty assessed by the division shall be final only after the person charged with a violation described under Subsection (1) has been given an opportunity for public hearing."
6. Under Utah Code Ann. § 40-8-9.1(3)(b) "if a public hearing is held, the board shall make findings of facts and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring the order to be paid."
7. Under Utah Code Ann. § 40-8-9.1(4) "[c]ivil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state."

ORDER

Based upon the Request, testimony, and evidence submitted, and the findings of fact and conclusions of law stated above, the Board hereby orders:

1. The Request in this cause is granted.
2. NOIs S/047/0081-0086 for the six Black Sands sites as described in Paragraph 1 of the Findings of Fact in this order are formally withdrawn.

3. The cash bonds associated with each of the six sites are forfeited and the Division is directed to complete the necessary reclamation work at the Black Sands sites using the forfeited funds for that purpose.

4. The Division is authorized to begin reclamation work at the Black Sands sites described in Paragraph 1 of the Findings of Fact section in this order.

5. The Division is authorized to seek the repayment of all reclamation costs from Black Sands as well as any other additional costs and attorney's fees associated with this matter.

6. Nevtah Capital Management Inc. and Mr. Edward Pucciarelli are dismissed from this action.

7. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63G-4-208(e) - (g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order is issued. Utah Code Ann. §§ 63G-4-401(3)(a) and 403. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. § 63G-4-302, entitled, "Agency Review – Reconsideration," states:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for

reconsideration with the agency, stating the specific grounds upon which relief is requested.

- (b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.
- (2) The request for reconsideration shall be filed with the agency and one copy shall be mailed to each party by the person making the request.
- (3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.
- (b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

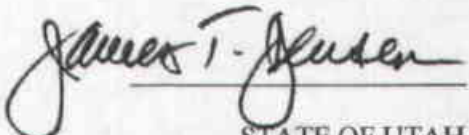
Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63G-4-302 and the deadline in Utah Admin. Code R641-110-100 for moving to rehear

this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

8. The Board retains continuing jurisdiction over all the parties and over the subject matter of this cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this order by the Utah Supreme Court.

DATED this 13th November day of ~~October~~, 2012


STATE OF UTAH
BOARD OF OIL, GAS, AND MINING
James T. Jensen, Chairman

CERTIFICATE OF MAILING

I here by certify that I caused a true and correct copy of the forgoing Findings of Fact, Conclusions of Law, and Order to be personally served or mailed first class mail, postage prepaid, the 20th day of ~~October~~^{November}, 2012, to:

BLACK SANDS HOLDING COMPANY
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